

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVIS NGUYEN,

Defendant and Appellant.

C082352

(Super. Ct. No. 07F09493)

Defendant Davis Nguyen purports to appeal from an order dismissing his postjudgment motion to waive or modify his restitution fine on the ground of inability to pay the fine.

Counsel was appointed to represent defendant on appeal. Counsel filed an opening brief setting forth the facts of the case and requesting this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Counsel advised defendant of his right to file a supplemental

brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant. We shall dismiss the appeal as taken from a nonappealable order.

“ ‘[G]enerally, a trial court lacks jurisdiction to resentence a criminal defendant after execution of sentence has begun. [Citation.]’ [Citations.] There are few exceptions to the rule.” (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1204.) No recognized exception applies here, as the trial court did not recall the sentence within 120 days of commitment of defendant to prison, and defendant has not and cannot reasonably argue that the restitution fine was not authorized or was the product of clerical error. (See *id.* at pp. 1205-1207.) Hence, the trial court was without jurisdiction to waive or modify the restitution fine. (*Id.* at p. 1208.)

“ ‘ “It is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute.” [Citations.]’ [Citation.]” (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 598.) “Stated simply, a criminal appeal by the defendant may be taken only from ‘a final judgment of conviction’ (§§ 1237, subd. (a), 1466, subd. (2)(A)) or from ‘any order made after judgment, affecting the substantial rights’ of the party (§§ 1237, subd. (b), 1466, subd. (2)(B)).” (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 980.) Here, appeal is not taken from the judgment of conviction. And, “[s]ince the trial court lacked jurisdiction to [waive or] modify the restitution fine[], its order [dismissing] defendant’s motion requesting the same did not affect his substantial rights and is not an appealable postjudgment order. [Citation.] The appeal [must] be dismissed. [Citation.]” (*People v. Turrin, supra*, 176 Cal.App.4th at p. 1208; accord, *People v. Mendez* (2012) 209 Cal.App.4th 32, 34.)

DISPOSITION

The appeal is dismissed.

RAYE, P. J.

We concur:

HULL, J.

DUARTE, J.